

CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 31

JULY 9, 1997

NO. 28

This issue contains:

U.S. Customs Service

T.D. 97-54

General Notices

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

Treasury Decision

(T.D. 97-54)

SYNOPSIS OF DRAWBACK DECISIONS

The following are synopses of drawback contracts approved February 26, 1997 to May 21, 1997, inclusive, pursuant to Subpart C, Part 191, Customs Regulations; and an approval under Treasury Decision 84-49.

In the synopses below are listed for each drawback contract approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the proposal was signed, the basis for determining payment, the Port Director to whom the contract was forwarded or approved by, and the date on which it was approved.

Dated: June 19, 1997.

WILLIAM G. ROSOFF,

Acting Director,

International Trade Compliance Division.

(A) Company: Abbott Laboratories

Articles: Divalproex sodium

Merchandise: Valproic acid; diethyl dipropyl malonate

Factories: North Chicago & Abbott Park, IL

Proposal signed: February 25, 1997

Basis of claim: Used in

Contract forwarded to PD of Customs: Chicago, March 24, 1997

Revokes: T.D. 88-76-B

(B) Company: Advanced Deposition Technologies, Inc.

Articles: Electrical/electronic film capacitor dielectrics

Merchandise: Polypropylene bi-axially oriented film (a/k/a
SUNNYFAN)

Factory: Taunton, MA

Proposal signed: November 11, 1996

Basis of claim: Used in

Contract forwarded to PD of Customs: Boston, February 26, 1997

(C) Company: Alcoa Fujikura Ltd.

Articles: Fiber optic cable

Merchandise: Fiber reinforced plastic (FRP); optical fibers; aluminum clad steel wire; fiber stranded subunits; PBT plastic resin

Factory: Duncan, SC

Proposal signed: December 20, 1995

Basis of claim: Appearing in

Contract forwarded to PD of Customs: New York, March 25, 1997

(D) Company: ARCO Chemical Co.

Articles: Propylene oxide; tertiary butyl alcohol; tertiary butyl hydroperoxide

Merchandise: Isobutane; propylene; chemical grade propylene

Factory: Pasadena, TX

Proposal signed: October 9, 1996

Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation

Contract forwarded to PD of Customs: Houston, March 6, 1997

Revokes: T.D. 94-83-B

(E) Company: BASF Corp.

Articles: Dyes; pigments; Uvinuls (ultraviolet stabilizers) in liquid and powder form

Merchandise: Dyes; dye intermediates

Factory: Rensselaer, NY

Proposal signed: December 8, 1995

Basis of claim: Used in

Contract forwarded to PD of Customs: New York, May 13, 1997

(F) Company: Brown & Williamson Tobacco Corp.

Articles: Cigarette tobacco in bulk or in packages; cigarette tobacco rolled in cigarettes; smoking (pipe) tobacco in the form of granulated tobacco or cut-plug tobacco

Merchandise: Oriental tobacco; oriental scrap

Factories: Macon, GA; Winston-Salem, NC

Proposal signed: March 12, 1997

Basis of claim: Used in

Contract forwarded to PD of Customs: Chicago, March 25, 1997

(G) Company: Chase Brass & Copper Co., Inc.

Articles: Brass rods and shapes

Merchandise: Brass billets

Factory: Montpelier, OH

Proposal signed: March 15, 1996

Basis of claim: Appearing in

Contract forwarded to PD of Customs: Chicago, May 9, 1997

(H) Company: Cytec Industries Inc.

Articles: Acrylic fiber

Merchandise: Acrylonitrile

Factory: Milton, FL

Proposal signed: July 18, 1996

Basis of claim: Appearing in

Contract forwarded to PD of Customs: New York, April 7, 1997

(I) Company: Duracell Inc.

Articles: Dry cell alkaline batteries

Merchandise: PA36A nonwoven separator; PA60A nonwoven separator

Factories: Cleveland, TN (2); LaGrange, GA; Lancaster, SC

Proposal signed: February 11, 1997

Basis of claim: Used in

Contract forwarded to PD of Customs: New York, May 14, 1997

(J) Company: Elf Atochem North America, Inc.

Articles: Various benzoyl peroxide; tertiary butyl peroxybenzoate; tertiary amyl peroxy-benzoate; 2,5-dimethyl-2,5-di(benzoyl-peroxy)hexane products

Merchandise: Benzoyl chloride

Factories: Piffard, NY; Crosby, TX

Proposal signed: January 14, 1997

Basis of claim: Used in

Contract forwarded to PD of Customs: Boston, March 20, 1997

(K) Company: Ferrero U.S.A. Inc.

Articles: Chocolate hazelnut spread

Merchandise: Hazelnuts; cocoa; hydrogenated peanut oil

Factory: Somerset, NJ

Proposal signed: July 15, 1996

Basis of claim: Appearing in

Contract forwarded to PD of Customs: New York, May 7, 1997

(L) Company: General Press Colors, Ltd.

Articles: Flushed colors

Merchandise: Color pigments

Factory: Addison, IL

Proposal signed: November 13, 1996

Basis of claim: Appearing in

Contract forwarded to PD of Customs: New York, March 6, 1997

(M) Company: Hoechst Celanese Chemical Group, Ltd. (partnership)
Articles: Inhibited butyl acrylates
Merchandise: n-butyl alcohol; industrial grade acrylic acid; unrefined grade acrylic acid
Factory: Pasadena, TX
Proposal signed: February 5, 1997
Basis of claim: Used in
Contract forwarded to PD of Customs: Houston, April 9, 1997

(N) Company: Hoechst Celanese Chemical Group, Ltd.
Articles: Crude acrylic acid
Merchandise: Propylene
Factory: Pasadena, TX
Proposal signed: December 13, 1996
Basis of claim: Used in
Contract forwarded to PD of Customs: Houston, April 8, 1997

(O) Company: Kinyo Virginia, Inc.
Articles: Rubber printing blankets
Merchandise: Piece goods
Factory: Newport News, VA
Proposal signed: December 12, 1996
Basis of claim: Appearing in
Contract forwarded to PD of Customs: Chicago, April 17, 1997

(P) Company: Lederle Parenterals, Inc.
Articles: Pharmaceuticals (methotrexate injectable vials)
Merchandise: Methotrexate (amethopterin; 4-amino-10-methylfolic acid)
Factory: Carolina, PR
Proposal signed: February 7, 1996
Basis of claim: Appearing in
Contract forwarded to PD of Customs: New York, March 20, 1997

(Q) Company: Lotte U.S.A., Inc.
Articles: Chewing gum base; chewing gum; confections; flavors
Merchandise: Natural resin; synthetic resin; wax; rubber; chewing gum base; sugar; sugar alcohol; talc; calcium carbonate; acetylated monoglyceride; corn syrup; caramel color; tocopherol (vitamin E); menthol; licorice extract
Factory: Battle Creek, MI
Proposal signed: December 4, 1996
Basis of claim: Appearing in
Contract forwarded to PD of Customs: Chicago, March 14, 1997
Revokes: T.D. 82-11-S

(R) Company: The Lubrizol Corp.

Articles: Lubricant additives

Merchandise: Lubricating oil additive intermediate 0840.3

Factories: Painesville, OH; Deerpark & Pasadena, TX

Proposal signed: September 18, 1996

Basis of claim: Used in

Contract forwarded to PD of Customs: Chicago, April 23, 1997

(S) Company: Montell U.S.A., Inc.

Articles: Polypropylene homopolymers; polypropylene copolymers;
polyethylene homopolymers

Merchandise: Propylene; ethylene; catalysts: FT4S, UDC, and HMC

Factories: Pasadena, TX; West Lake Charles, LA

Proposal signed: May 7, 1997

Basis of claim: Used in, with distribution to the products obtained in
accordance with their relative values at the time of separation

Contract forwarded to PD of Customs: Houston, May 9, 1997

Revokes: T.D. 94-83-L

(T) Company: Pfizer Inc.

Articles: Glucitol XL

Merchandise: 4-(2-(5 methylpyrazine-2 carboxamido)ethyl) benzene--
sulfonamide, sodium salt

Factories: Groton, CT; Brooklyn, NY

Proposal signed: January 24, 1997

Basis of claim: Used in

Contract forwarded to PD of Customs: New York, May 9, 1997

(U) Company: Pirelli Armstrong Tire Corp.

Articles: Tires

Merchandise: Steel cord; Santac; Sakite; Nobac; Manzite A; Hardite;
Erlite A; Pinkite A, Pinkite B; single strand bead wire

Factories: Hanford, CA; Madison, TN; Little Rock, AR

Proposal signed: August 9, 1996

Basis of claim: Appearing in

Contract forwarded to PD of Customs: New York, March 14, 1997

(V) Company: Rich Products Corp.

Articles: Bakery products and non-dairy toppings, icings and creamers

Merchandise: High fructose corn syrup

Factories: Buffalo, NY; Niles, IL; Appleton, WI; Fresno & Claremont,
CA; Hilliard, OH; Lake City, PA; Marlborough, MA; Murfreesboro
& Nashville, TN; Saugatuck, MI; Winchester, VA

Proposal signed: March 6, 1997

Basis of claim: Used in

Contract forwarded to PD of Customs: New York, April 9, 1997

(W) Company: San Joaquin Valley Concentrates (a limited partnership)

Articles: Blended grape juice concentrates

Merchandise: Red and white grape juice concentrate

Factory: Fresno, CA

Proposal signed: November 22, 1996

Basis of claim: Appearing in

Contract forwarded to PD of Customs: San Francisco, March 25, 1997

(X) Company: SinterMet, Inc.

Articles: Mill rolls and industrial knives

Merchandise: Cemented tungsten carbide powder

Factory: Kittanning, PA

Proposal signed: January 9, 1997

Basis of claim: Appearing in

Contract forwarded to PD of Customs: New York, May 21, 1997

Revokes: T.D. 81-281-X

(Y) Company: Sostram Corp.

Articles: Pesticides & fungicides

Merchandise: Tetrachloroisophthalonitrile (a/k/a chlorothalonil)

Factory: Roswell, GA

Proposal signed: April 25, 1997

Basis of claim: Appearing in

Contract forwarded to PD of Customs: San Francisco, May 2, 1997

(Z) Company: Ventre Packing Co., Inc.

Articles: Pasta sauces; salsas

Merchandise: Diced tomatoes

Factory: Syracuse, NY

Proposal signed: January 22, 1997

Basis of claim: Used in

Contract forwarded to PD of Customs: Boston, March 14, 1997

APPROVAL UNDER T.D. 84-49

(1) Company: LYONDELL-CITGO Refining Co., Ltd.

Articles: Various petroleum products

Merchandise: Crude petroleum; petroleum derivatives

Factory: Houston, TX

Proposal signed: October 18, 1996

Basis of claim: As provided in T.D. 84-49

Contract forwarded to PD of Customs: Houston, March 21, 1997

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, June 24, 1997.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
*Assistant Commissioner,
Office of Regulations and Rulings.*

REVOCATION OF RULING LETTERS RELATING TO TARIFF CLASSIFICATION OF FRUIT PUREES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of two tariff classification ruling letters.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking two rulings pertaining to the tariff classification of fruit purees. The fruit purees are homogenized preparations made with fruit that is washed, boiled, passed through three screens of decreasing size aperture, concentrated, sterilized, refrigerated, and aseptically packed in 55 gallon drums. Notice of the proposed revocation was published on May 14, 1997, in the Customs Bulletin, Volume 31, No. 20.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after September 8, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Cascardo, Food and Chemicals Classification Branch, Office of Regulations and Rulings (202) 482-7061.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On May 14, 1997, Customs published in the Customs Bulletin, Volume 31, No. 20, a notice of a proposal to revoke New York Ruling Letter (NYRL) 808553, dated April 21, 1995, and NYRL 896391, dated April 13, 1994, which held that pear and apricot purees were classifiable in heading 2008, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), the provision for fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar and other sweetening matter of spirit, not elsewhere specified or included, dutiable at 17.6 and 12.5 percent *ad valorem*, respectively. In 1994, articles classifiable under subheading 2008.50.2000, HTSUSA, were eligible for duty free treatment, as products of Argentina.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking NYRL 808553 and 896391 to reflect the proper classification of the given fruit purees in heading 2007, HTSUSA, the provision for other jams, fruit jellies, marmalades, fruit or nut purees and fruit or nut pastes, being cooked preparations, whether or not containing added sugar or other sweetening matter. Classification is fact specific. Headquarters Ruling Letter (HRL) 959822, revoking NYRL 808553, is set forth in "Attachment A" to this document. HRL 960370, revoking NYRL 896391, is set forth in "Attachment B" to this document.

Clerical errors, found in the May 14, 1997, notice, have been corrected as set forth here. In proposed HRL 959822, the fact that the pears were "boiled" had been omitted. In proposed HRL 960370, the facts indicated that the apricots were "pined." That word should have been "pitted." Lastly, while the proposed rulings classified the purees in the proper tariff heading 2007, HTSUSA, the purees are ineligible for duty free treatment in 1997.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625 does not constitute a change in practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: June 24, 1997.

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC, June 24, 1997.

CLA-2 RR:TC:FC 959822 RC

Category: Classification

Tariff No. 2007.99.4800

RENE ORTIZ VILLAFANE
RENE ORTIZ VILLAFANE, INC.
2000 Kennedy Avenue, Suite 207
MAI Basic Four Center
San Juan, PR 00920

Re: Revocation of New York Ruling Letter (NYRL) 808553; pear puree from Argentina.

DEAR MR. VILLAFANE:

We have been asked to reconsider NYRL 808553, dated April 21, 1995. This ruling, issued to you, on behalf of your company, concerns the classification of pear puree, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). This letter is to inform you that NYRL 808553 no longer reflects the views of the U.S. Customs Service.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NYRL 808553 was published on May 14, 1997, in the Customs Bulletin, Volume 31, Number 20. The following represents our position.

Facts:

In NYRL 808553, dated April 21, 1995, Customs classified a pear puree product in subheading 2008.40.0040, HTSUSA, dutiable in 1995 at 17.6 percent *ad valorem*. The homogenized pear product contains no identifiable fruit pieces. The product has been prepared; washed, boiled, crushed, sieved (using three sieves of differing apertures), sterilized, refrigerated, and aseptically packed in 55-gallon drums.

Issue:

Whether the instant pear product is classifiable in subheading 2008.40.0040, HTSUSA, or in subheading 2007.99.4800, HTSUSA.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. Most imported goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs.

The EN for heading 2008 (p. 152) refers to fruit "prepared or preserved otherwise than by any of the processes specified in * * * the preceding headings of this chapter." The articles in question are pear purees. According to *Webster's New World Dictionary of the American Language, Second College Edition*, (The World Publishing Company 1972), the term "puree" denotes a thick, moist, smooth-textured form of cooked vegetables, fruits, etc., usually made by pressing the pulp through a sieve or by whipping it in a blender. The instant product is pulp that has been pressed through three sieves. As such, the pulp has in fact been "pureed." The word "puree" appears specifically in the heading 2007, HTSUS, the heading immediately preceding 2008, HTSUS. Therefore, it is our opinion the puree is properly classified in heading 2007 HTSUS, rather than heading 2008, HTSUS.

Holding:

The pear puree is properly classifiable in subheading 2007.99.4800, HTSUSA, the provision for "Jams, fruit jellies, marmalades, fruit or nut puree and fruit or nut pastes, being cooked preparations, whether or not containing added sugar or other sweetening matter: Other: Other: Pastes and purees: Apple, quince and pear," dutiable in 1997 at 13.5 percent *ad valorem*.

NYRL 808553, dated April 21, 1995, is revoked.

In accordance with 19 U.S.C. 1625, this ruling will become effective 60 days from its publication in the Customs Bulletin. Publication of rulings or decisions pursuant to 19 U.S.C. 1625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, June 24, 1997.

CLA-2 RR:TC:FC 960370 RC
Category: Classification
Tariff No. 2007.99.6500

MS. ALICIA B. GORDON
PURCELL & ASSOCIATES
3170 Crow Canyon Place, Suite 220
San Ramon, CA 94583

Re: Revocation of New York Ruling Letter (NYRL) 896391; apricot puree from Argentina.

DEAR MS. GORDON:

We have been asked to reconsider NYRL 896391, dated April 13, 1994. This ruling, issued to you, on behalf of your company, concerns the classification of apricot puree, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). This letter is to inform you that NYRL 896391 no longer reflects the views of the U.S. Customs Service.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NYRL 896391 was published on May 14, 1997, in the Customs Bulletin, Volume 31, Number 20. The following represents our position.

Facts:

In NYRL 896391, dated April 13, 1994, Customs classified an apricot puree product in subheading 2008.50.2000, HTSUSA, dutiable in 1994 at 12.5 percent *ad valorem*, as products of Argentina, entitled duty free treatment under the Generalized System of Preferences. The homogenized apricot product contains no identifiable fruit pieces. The product has been prepared: washed, pitted, sieved (using three sieves of differing apertures), concentrated by heat, and packed through "an aseptic drumming line" into 55-gallon drums. After importation, the apricot product is to be used to manufacture beverages.

Issue:

Whether the instant apricot product is classifiable in subheading 2008.40.0040, HTSUSA, or in subheading 2007.99.6500, HTSUSA.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. Most imported goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs.

The EN for heading 2008 (p. 152) refers to fruit "prepared or preserved otherwise than by any of the processes specified in * * * the preceding headings of this chapter." The ar-

ticles in question are apricot purees. According to *Webster's New World Dictionary of the American Language, Second College Edition*, (The World Publishing Company 1972), the term "puree" denotes a thick, moist, smooth-textured form of cooked vegetables, fruits, etc., usually made by pressing the pulp through a sieve or by whipping it in a blender. The product is pulp that has been pressed through three sieves. As such, the pulp has in fact been "pureed." The word "puree" appears specifically in the heading 2007, HTSUS, the heading immediately preceding 2008, HTSUS. Therefore, it is our opinion the puree is properly classified in heading 2007 HTSUS, rather than heading 2008, HTSUS.

Holding:

The apricot puree is properly classifiable in subheading 2007.99.6500, HTSUSA, the provision for "Jams, fruit jellies, marmalades, fruit or nut puree and fruit or nut pastes, being cooked preparations, whether or not containing added sugar or other sweetening matter: Other: Other: Pastes and purees: other," dutiable in 1997 at 11.3 percent *ad valorem*.

NYRL 896391, dated April 13, 1994, is revoked.

In accordance with 19 U.S.C. 1625, this ruling will become effective 60 days from its publication in the Customs Bulletin. Publication of rulings or decisions pursuant to 19 U.S.C. 1625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

MODIFICATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF IRON CASTINGS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling letter pertaining to the tariff classification of various iron castings, described as rolls, C-clamps, ceiling flanges, iron split pipe or tubing clamps, and hex-nut brackets.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after September 8, 1997.

FOR FURTHER INFORMATION CONTACT: David W. Spence, Attorney-Advisor, Tariff Classification Appeals Division, (202) 482-7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On May 21, 1997, Customs published a notice in the Customs Bulletin, Volume 31, Number 14, proposing to modify NY A84139, issued on June 14, 1996, which concerned the tariff classification of various castings, described as rolls, C-clamps, ceiling flanges, iron split pipe or tub-

ing clamps, and hex-nut brackets. One comment was received in response to this notice.

Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying NY A84139 to reflect the proper classification of the rolls under subheading 7325.10.00, HTSUS, as other articles of nonmalleable cast iron, and the C-clamps, ceiling flanges and iron split pipe or tubing clamps under subheading 7325.99.10, HTSUS, as other articles of cast iron. Based upon the comment received by the importer who was the recipient of NY A84139, it is our understanding that the hex-nut brackets which were held to be classifiable in NY A84139 under subheading 7318.19.00, HTSUSA, as other iron threaded articles, should have been included in the importer's request for reconsideration of NY A84139. As Customs stands by the classification of the hex-nut brackets in NY A84139 under subheading 7318.19.00, HTSUS, it will not be modified.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations [19 CFR 177.10(c)(1)].

Dated: June 23, 1997.

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, June 23, 1997.

CLA-2 RR:TC:MM 959641 DWS
Category: Classification
Tariff No. 7325.10.00, 7325.99.10 and 7318.19.00

MR. RORY GILHAM, VICE PRESIDENT
CHR INTERNATIONAL INC.
600 W. Freedom Avenue
Orange, CA 92665

Re: Reconsideration of NY A84139; castings; C-clamps; rolls; ceiling flanges; split pipe or tubing clamps; hex-nut brackets; Explanatory Notes 73.25 and 73.26.

DEAR MR. GILHAM:

This is in response to your letter of June 20, 1996, to the Area Director of Customs, New York Seaport, requesting reconsideration of NY A84139, dated June 14, 1996, concerning the classification C-clamps, rolls, ceiling flanges, split pipe or tubing clamps, and hex-nut brackets under the Harmonized Tariff Schedule of the United States (HTSUS). Your letter

was referred to this office for a response. We regret the delay. In preparing this ruling, consideration was also given to the opinions expressed in your letter of June 2, 1997.

Facts:

The merchandise consists of various castings, including: malleable cast iron C-clamps (model 270), used to hold beams; nonmalleable cast iron rolls (model 485), used as pipe roller supports; malleable cast iron ceiling flanges (model B3199), used as ceiling attachments; malleable cast iron split pipe or tubing clamps (model B3198H), used as pipe hangers; and ductile hex-nut brackets, used as fasteners.

Issue:

Whether the nonmalleable cast iron rolls and the malleable cast iron C-clamps, malleable cast iron ceiling flanges, and the malleable cast iron split pipe or tubing clamps are classifiable under subheading 7325.10.00, HTSUS, as other articles of nonmalleable cast iron, and subheading 7325.99.10, HTSUS, as other articles of cast iron, respectively; or whether the articles are classifiable under subheading 7326.90.85, HTSUS, as other articles of iron or steel.

Whether the ductile hex-nut brackets are classifiable under subheading 7318.19.00, as iron threaded articles, or under subheading 7325.99.10, HTSUS, as other articles of cast iron.

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The subheadings under consideration are as follows:

7318.19.00: [s]crews, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: [t]hreaded articles: [o]ther.

The general, column one rate of duty for goods classifiable under this provision is 5.7 percent *ad valorem*.

7325.10.00: [o]ther cast articles of iron or steel: [o]f nonmalleable cast iron.

Goods classifiable under this provision receive duty-free treatment.

7325.99.10: [o]ther cast articles of iron or steel: [o]ther: [o]f cast iron.

The general, column one rate of duty for goods classifiable under this provision is 1.9 percent *ad valorem*.

7326.90.85: [o]ther articles of iron or steel: [o]ther: [o]ther: [o]ther: [o]ther.

The general, column one rate of duty for goods classifiable under this provision is 4 percent *ad valorem*.

In understanding the language of the HTSUS, the harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). In part, Explanatory note 73.25 (p. 1125-1126) states that:

[t]his heading covers **all cast** articles of iron or steel, not elsewhere specified or included * * *

This headings **does not cover** castings which are products falling in other headings of the Nomenclature (e.g., recognizable parts of machinery or mechanical appliances) or unfinished castings which require further working but have the essential character of such finished products.

In part, Explanatory Note 73.26 (p. 1038) states that:

[t]he heading also excludes:

(a)-(b) ~~xxx~~

(c) Cast articles of iron or steel (**Heading 73.25**).

In describing the merchandise in your communication to Customs on August 5, 1996, you stated that:

[o]ur parts are not intended for use as part of any machine or machinery nor are they part of an appliance. Our parts are definitely not "recognizable parts" of any individual

machine or appliance. Our parts are used in construction to attach, suspend and support various components independent of any machine or appliance and the supports are definitely not part of the machine or appliance itself.

The decision in NY A84139, that the articles are classifiable under subheading 7326.90.85, HTSUS, was primarily made based upon the contention that the castings are precluded from classification under heading 7325, HTSUS, because of the exclusionary language in Explanatory Note 73.25. Customs ruled that the products are unfinished castings which require further working but have the essential character of finished parts.

We disagree with the decision in NY A84139 concerning the rolls, C-clamps, ceiling flanges, and iron split pipe or tubing clamps. the language in Explanatory Note 73.25 is broad in stating that heading 7325, HTSUS, includes **all** cast articles of iron or steel. There is no question that, based upon an examination of the language in Explanatory Note 73.25, industrial definitions, and provided samples, the articles are of cast iron. The articles are not precluded from classification under heading 7325, HTSUS, based upon exclusionary language in Explanatory Note 73.25, because they are not parts of any particular machine or appliance, and they are not described under any other heading of the HTSUS, except under the broad "basket" provision of heading 7326, HTSUS. It is our position that such a heading is not specific enough to preclude classification of the castings under heading 7325, HTSUS.

We also note the language in Explanatory Note 73.26 which precludes the classification of cast iron articles under heading 7325, HTSUS.

Therefore, as Explanatory Notes 73.25 and 73.26 are clear in directing the classification of the subject articles, the castings are classifiable under subheadings 7325.10.00 and 7325.99.10, HTSUS, and not under subheading 7326.90.85, HTSUS.

With regard to the hex-nut brackets, as they impart the essential character of finished hex-nut brackets described under heading 7318, HTSUS, which is specific in listing the article to be included in the heading (the brackets are similar to the washers listed in the heading), based upon the exclusionary language of Explanatory Note 73.25, they are precluded from classification under heading 7325, HTSUS, and are classifiable under subheading 7318.19.00, HTSUS.

Holding:

The nonmalleable cast iron rolls are classifiable under subheading 7325.10.00, HTSUS, as other articles of nonmalleable cast iron.

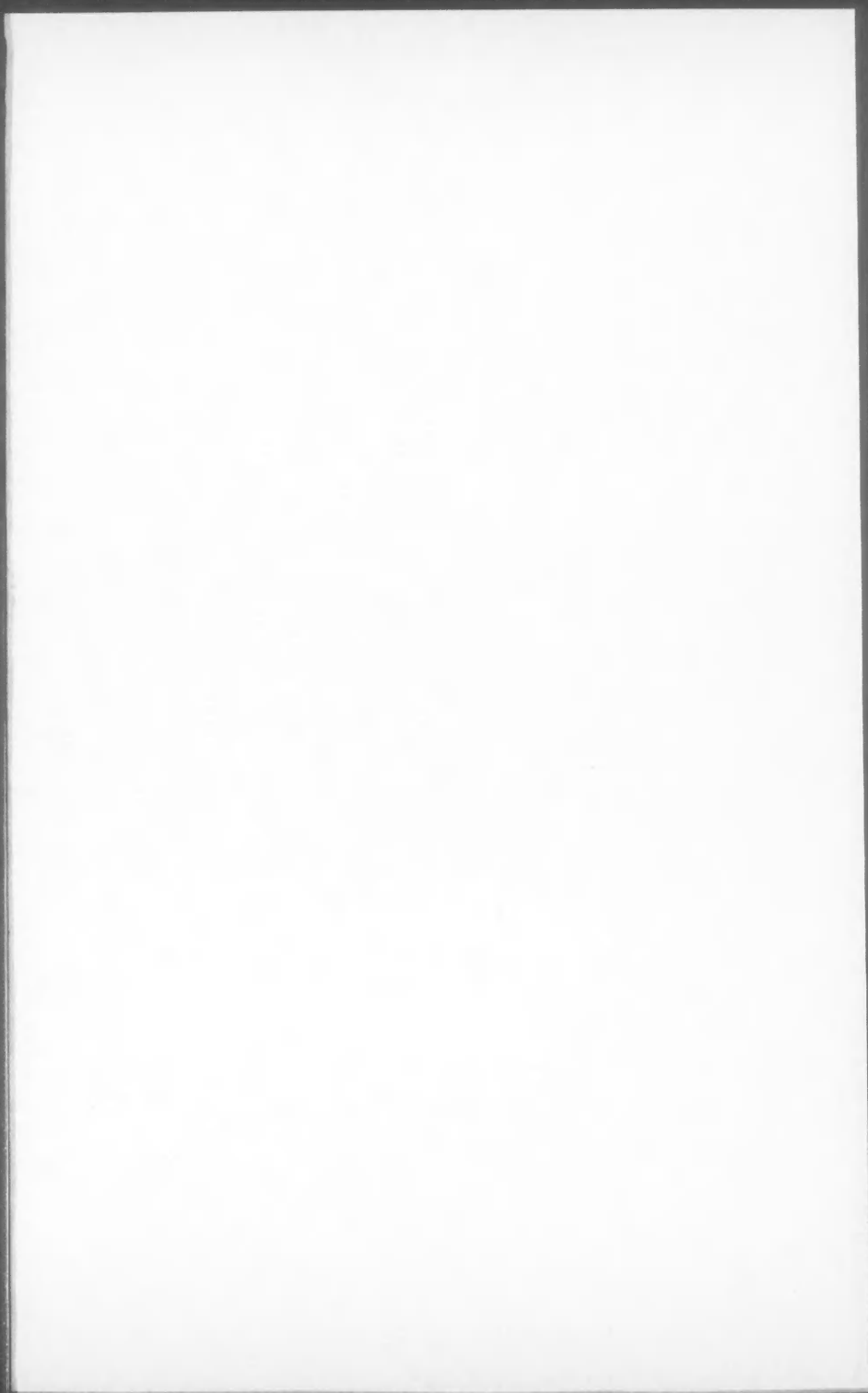
The malleable cast iron C-clamps, malleable cast iron ceiling flanges, and the malleable cast iron split pipe or tubing clamps are classifiable under subheading 7325.99.10, HTSUS, as other articles of cast iron.

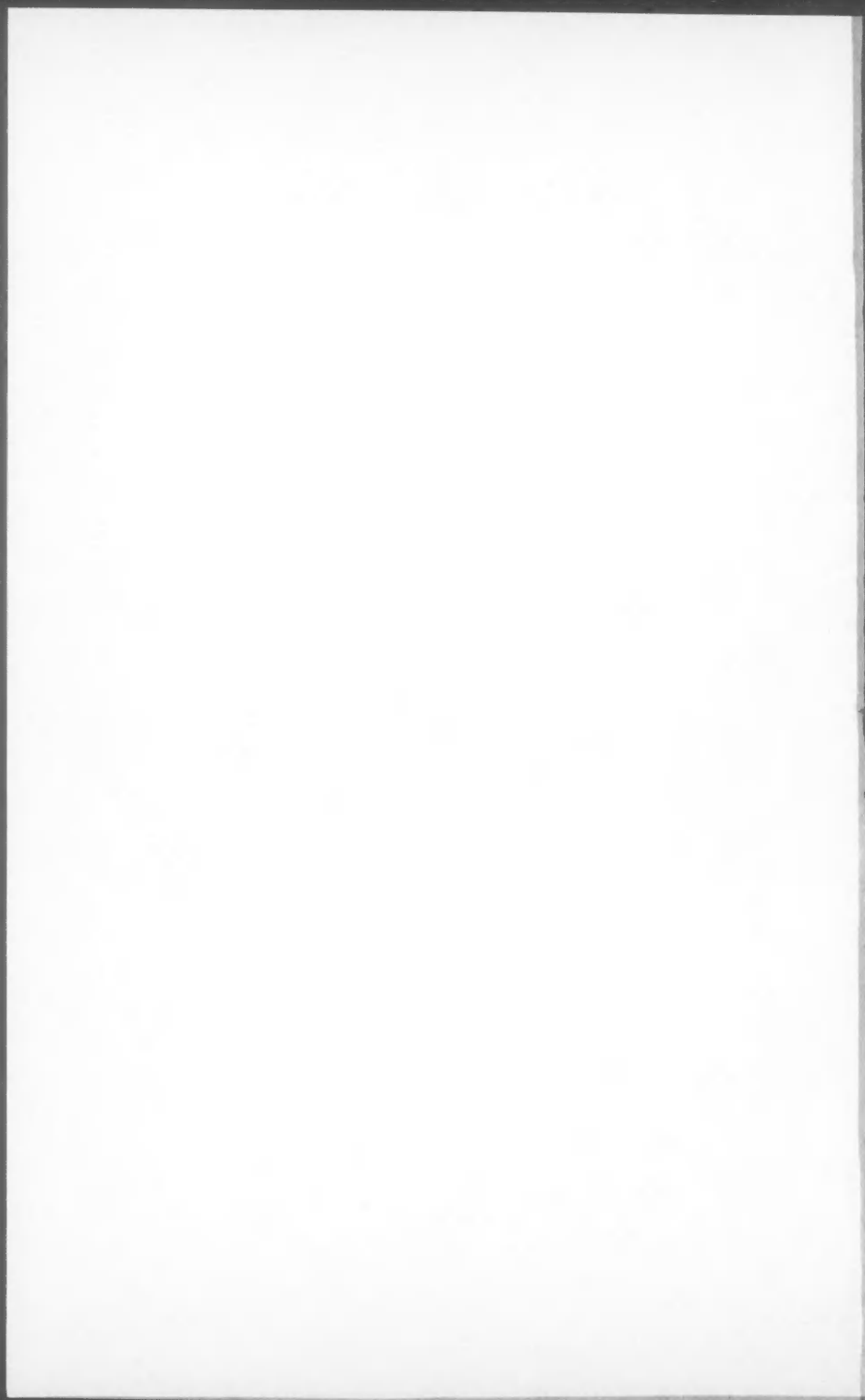
The hex-nut brackets are classifiable under subheading 7318.19.00, as other iron threaded articles.

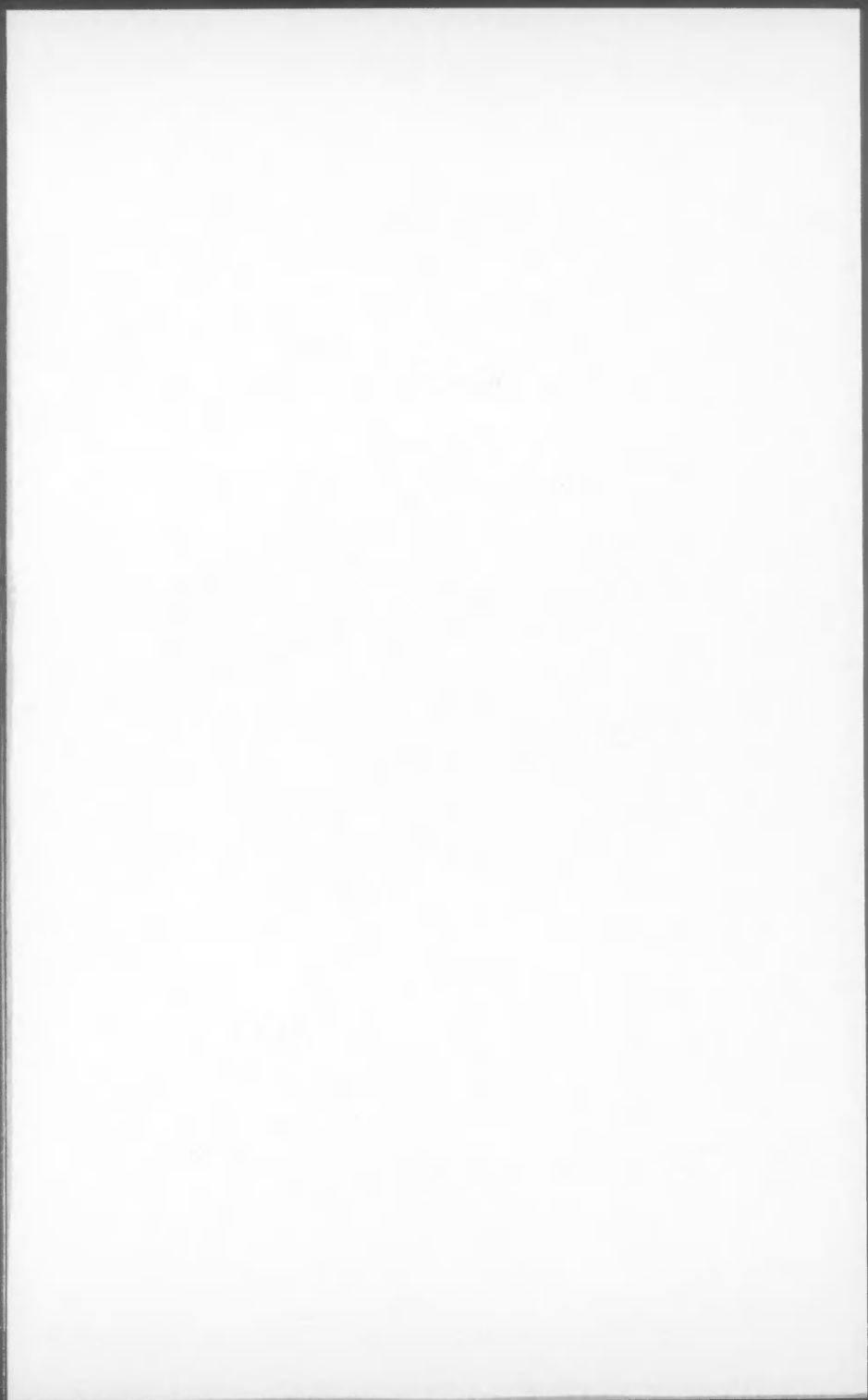
Effect on Other Rulings:

NY A84139 is modified as set forth in this ruling.

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)







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